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APPLICATION NO. *	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,929	10/23/2001	Jeffrey T. Johnson	J38.2-10197	2936
490	7590	11/14/2003	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			WRIGHT, ANDREW D	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/047,929	<b>Applicant(s)</b> JOHNSON	
	<b>Examiner</b> Andrew Wright	<b>Art Unit</b> 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 28 August 2003.

2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-9 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
       If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
       a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
           1. ☐ Certified copies of the priority documents have been received.  
           2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
           3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
       \* See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
       a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____
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**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark (US Des. 264,424). Clark discloses a tool. The tool comprises an elongate rod. The rod has a multi-ridged hand grip section at one end. The rod has a tined section at the other end. The rod has at least three curved sections that define respective arcs of curvature. With particular reference to figures 2 and 4, the rod has a curved section at the fillet just before the tined section. The curvature and arc of curvature are shown in figure 4. It can be seen from figure 2 that all tines are contained substantially in the plane of the arc of curvature. No other tines extend in a direction substantially outside the plane of the arc of curvature. The removal of weeds is recited as an intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the

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prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The tool of Clark could be used to remove weeds from a grate.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 9 is rejected under 35 U.S.C. 102(e) as being anticipated by Smith (US 6,438,785). Smith discloses a brush. The brush constitutes a tool. The brush comprises an elongate curved rod (27). A multi-ridged hand grip section is at one end (22) of the rod. A bristle section is at the other end (21) of the rod. The bristles constitute tines. Each bristle has one end attached to the rod, and another end unattached to the rod. The unattached end has a protuberance (see figure 4). The rod has an arc or curvature at its second end (21) (see figure 4). The central bristles (see figure 5) project out from the rod in a plane substantially containing the arc of curvature of the rod end (21). The removal of weeds is recited as an intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the

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intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The brush of Smith could be used to remove weeds from a grate.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lisowski (US 5,937,473) in view of Urie, Jr. et al. (US 5,505,154). Lisowski discloses a tool that comprises an elongate rod. The rod has a curved portion with an associated arc of curvature. The tool comprises a multi ridged hand grip (59) at one end of the rod. The tool comprises a tined section (14) at the other end of the rod. Lisowski does not disclose that the tines are in a plane substantially containing the arc of curvature of the rod. Lisowski teaches in lines 28-31 of column 3 that other tool attachments, such as brushes, may be used in place of the rake finger tool that is shown. Urie shows a tool that has a screw on brush attachment. Based upon the suggestion of Lisowski and the disclosure of Urie, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the Lisowski finger rake with a brush. The motivation would be to use a brush to clean the boat hull instead of a finger rake. The Urie brush comprises bristles along its center line that are in line with the axis of the

pole (see figure 2). The bristles constitute tines. Therefore, the use of the Urie brush on the Lisowski rod will result in a plurality of tines that project substantially out from the rod in the plane that contains the arc of curvature of the rod.

7. Regarding claim 2, the hand grip has an aperture in which strap (60) is held.

Regarding claim 3, the Lisowski tool is designed to float (line 35, column 3.)

8. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified invention of Lisowski as applied to claim 1 above, and further in view of Nunziato (US 3,993,013). The modified invention of Lisowski comprises bristles that constitute tines. The bristles are connected by a base (32). The base constitutes a brace bar. The hand grip of the modified invention of Lisowski does not have cross-hatched ridges. Nunziato discloses a boat tool with a hand grip (26) that has cross-hatched ridges. The cross-hatched ridges enhance the user's grip. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the invention of Lisowski by using a hand grip with cross-hatched ridges. The motivation would be to enhance the user's grip.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lisowski in view of Urie as applied to claim 1 above, and further in view of Cave (US 2,289,313). Lisowski does not disclose a brace bar attached between the ends of a tine that protrudes to a portion of an adjacent tine. Urie does not disclose the specific structure of the brush. Cave shows a brush with bristles similar to that of Urie. Cave shows that each bristle has one end attached to the rod (13) and one end unattached to the rod. Cave shows brace bar (17) that protrudes from between the two ends of a bristle, and

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protrudes to an adjacent bristle. The brace bar helps retain the bristles against the rod. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Lisowski by using a brace bar as shown by Cave. The motivation would be to help retain the bristles against the rod.

### ***Response to Arguments***

10. Applicant's arguments filed 8/28/03 with respect to claims 1-6 have been fully considered but they are not persuasive.

11. Applicant first argues that "[t]he combination of Lisowski and Urie would result in a device that neither lies flat on the floor or wall nor would it effectively remove weeds and debris" (Paper #12, Remarks, pg 5-6). The ability to lie flat on a floor or wall is not recited in the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The removal of weeds is recited as an intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Lisowski in view of Urie could be used to

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remove weeds from a grate. The *effectiveness* of weed removal is not recited in the claims.

12. Applicant argues that "combining the brush head of Urie with Lisowski destroys the intended purpose of Lisowski" (Paper #12, Remarks, pg 6). Applicant also argues no suggestion to combine. Both of these arguments are answered with the fact that Lisowski explicitly provides motivation to combine. Lisowski states in lines 28-31 of column 3: "It will be appreciated that other types of tools such as *brushes*, scrapers, squeegees *may be provided and utilized in place of the rake finger tool attachment*" (emphasis added).

13. Applicant lastly argues that "a bristle is not a tine" (Paper #12, Remarks, pg 6). Applicant supports this by asserting that the skilled artisan will recognize divergent functionality of the two, and by asserting that "tine" does not fall within the common meaning of the word "bristle." *Merriam-Webster's Collegiate Dictionary* defines a tine as "1: a slender pointed projecting part" (*Merriam-Webster's Collegiate Dictionary, Tenth Edition*, "tine" pg 1236, Merriam-Webster, Inc. 1998.) Brush bristles are generally slender and project from a base. Furthermore, Switall (US 5,269,040) and Morrison, Jr. (US 6,450,871) both refer to brush bristles as tines (Switall: column 2, line 20; Morrison, Jr.: column 3, lines 61-62). It is asserted then that a bristle, as commonly encountered in a bristle-type brush, falls within the ordinary meaning of the term "tine".



**Conclusion**

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Switall (US 5,269,040) and Morrison, Jr. (US 6,450,871) both refer to brush bristles as tines (Switall: column 2, line 20; Morrison, Jr.: column 3, lines 61-62).

16. Any inquiry concerning this communication should be directed to examiner Andrew D. Wright at telephone number (703) 308-6841. The examiner can normally be reached Monday-Friday from 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano, can be reached at (703) 308-0230. The fax number for

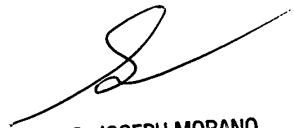
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official communications is 703-872-9306. The fax number directly to the examiner for unofficial communications is 703-746-3548.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703) 308-1113.

Andrew D. Wright  
Patent Examiner  
Art Unit 3617

*AW 11/7/03*

  
S. JOSEPH MORANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600